SUPREME COURT, U. S.

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MICHAEL RODAK, JR., CLERK

No. 71-1333

In the Supreme Court of the United States

OCTOBER TERM, 1971

FRANK WOLFE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Petitioner was indicted in the United States District Court for the Eastern District of New York for having knowingly possessed stolen merchandise—two truckloads of hijacked whiskey—in violation of 18 U.S.C. 659. The district court granted a pre-trial motion to suppress certain keys taken from petitioner at the time of his arrest. On appeal under 18 U.S.C. 3731, the court of appeals reversed *per curiam*, holding that the totality of circumstances established probable cause to believe that petitioner was involved in the unlawful activity (Pet. App. 1a–4a).

The facts are not in dispute and are set forth in the opinion below. The court of appeals properly held that

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the district court took too isolated a view of petitioner's conduct in holding that his act of directing the three car procession out of the garage was "totally unsuspicious." (Pet. App. 3a). The officers had information from a previously reliable informant that petitioner's garage was being used as a drop for stolen merchandise, and the circumstances creating probable cause to arrest petitioner's codefendants necessarily implicated him, since it was unlikely that the codefendants would entrust stolen merchandise to an innocent stranger. The opinion below persuasively demonstrates that the overall circumstances established probable cause for the arrest of petitioner and the taking of his keys. (Pet. App. 3a–4a).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JUNE 1972.

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